

REMARKS

By the above amendment, claims 2, 3, 5, 6, 8, 9 and 13 have been canceled without prejudice or disclaimer of the subject matter thereof, noting that claims 3 and 9 and the dependent claims thereof stand withdrawn from consideration as being directed to a non-elected invention, and such claims have been canceled without prejudice to the right to file a divisional application directed thereto.

Furthermore, by the present amendment, the specification has been amended to utilize the terminology of a cut-out portion at corners of the substantially rectangular shaped reflection film, as represented by the pixel electrode PX, as shown in Fig. 1, for example, which terminology has been also utilized in the claims in an attempt to overcome the rejection of claims 35 USC 112, first paragraph concerning a negative limitation "not provided". Thus, by this amendment of the specification and corresponding amendment of the claims, the features of the present invention are positively recited.

Applicants note that independent claim 1 has been amended to recite the features of the present invention, as illustrated in Fig. 1, for example, with the dependent claims and new added dependent claims being amended in accordance therewith, and reciting further features of the present invention, as will be discussed below. More particularly, by the present amendment, claim 1 has been amended in correspondence with the amendment of the specification in the paragraph bridging pages 10 and 11, and as illustrated in Fig. 1, wherein each of the reflection films, as represented by the pixel electrode PX, has a substantially rectangular shape, and four spacers SP are formed adjacent to four corners of each of the substantially rectangular shape reflection films, and are electrically separated from each of the substantially rectangular shape reflection films, and each of the substantially

rectangular shaped reflection films has a cut-out portion corresponding to a plurality of the four corners, at least in the vicinity of a plurality of the four spacers. Thus, claim 1, as amended, based upon the amendment of the specification, should now be considered to be in compliance with 35 USC 112, first paragraph, so that the rejection of claims under 35 USC 112, first paragraph, should now be overcome.

As to the rejection of claims 1 - 2, 1/4, 2/4, 2/5, 1/7, 2/8, 2/4/10-11 and 2/5/12, under 35 USC 102(e) as being anticipated by Melnik et al (US Patent Application Publication No. 2004/0075785A1) and the rejection of claims 2/6 and 2/6/13 under 35 USC 103(a) as being unpatentable over Melnik et al (US Patent Application Publication No. 2004/0075785 A1), in view of Fujimori et al (US Patent No. 6,864,945); such rejections are traversed insofar as they are applicable to the present claims and reconsideration and withdrawal of the rejections are respectfully requested.

As to the requirements to support a rejection under 35 USC 102, reference is made to the decision of In re Robertson, 49 USPQ 2d 1949 (Fed. Cir. 1999), wherein the court pointed out that anticipation under 35 U.S.C. §102 requires that each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference. As noted by the court, if the prior art reference does not expressly set forth a particular element of the claim, that reference still may anticipate if the element is "inherent" in its disclosure. To establish inherency, the extrinsic evidence "must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill." Moreover, the court pointed out that inherency, however, may not be established by probabilities or

possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.

As to the requirements to support a rejection under 35 USC 103, reference is made to the decision of In re Fine, 5 USPQ 2d 1596 (Fed. Cir. 1988), wherein the court pointed out that the PTO has the burden under '103 to establish a prima facie case of obviousness and can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. As noted by the court, whether a particular combination might be "obvious to try" is not a legitimate test of patentability and obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. As further noted by the court, one cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.

Turning first to Melnik et al and the Examiner's position that "a projection portions/spacers (pillar 234), wherein the formation of the reflection film not provided in the vicinities/peripheries of projection portions/spacers, (see figure 2)", applicants note that Fig. 3 of Melnik et al shows a top plan view of a portion of the device shown in Fig. 2. As is apparent from Fig. 3, the pillar 234, representative of a spacer, is provided substantially in the center of the reflection film or reflective pixel electrode, which is in the shape of a cross, as described in paragraph [0026], and which may possibly be considered a film of substantially rectangular shape with a cut out portion at the four corners thereof. However, it is readily apparent that Melnik et al does not disclose in the sense of 35 USC 102 or teach in the sense of 35 USC 103, the now

recited structural arrangement of claim 1, wherein spacers are arranged in the vicinity of the four corners, and the dependent claims. Thus, applicants submit that independent claim 1 and the dependent claims, patentably distinguish over Melnik et al and should be considered allowable thereover.

As to the combination of Melnik et al and Fujimori et al, it is readily apparent that Fujimori et al does not overcome the deficiencies of Melnik et al, as pointed out above, such that applicants submit that all claims patentably distinguish over this combination of references in the sense of 35 USC 103 and should be considered allowable thereover.

With respect to the features of the dependent claims, applicants note that claim 1, as amended is considered to be a generic claim with respect to the elected species, and whether or not the dependent claims are considered to be readable on the elected species, in view of the allowability of independent claim 1, which is a generic claim, as pointed out above, all dependent claims should be considered, and considered to be allowable at this time.

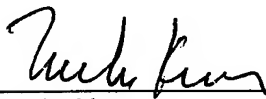
In view of the above amendments and remarks, applicants submit that all claims should be considered to be in compliance with 35 USC 112 and to patentably distinguish over the cited art. Accordingly, issuance of an action of favorable nature is courteously solicited.

To the extent necessary, applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to the deposit account of Antonelli,

Terry, Stout & Kraus, LLP, Deposit Account No. 01-2135 (Case: 501.43236X00),
and please credit any excess fees to such deposit account.

Respectfully submitted,

ANTONELLI, TERRY, STOUT & KRAUS, LLP

A handwritten signature in cursive script, appearing to read 'Melvin Kraus', is written over a horizontal line.

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